AGENCY — AGENTS' LIABILITY TO THIRD PERSONS — LIABILITY ON CONTRACT FOR PARTLY UNDISCLOSED PRINCIPAL. — The defendant, a hotel porter, called the plaintiff, a cabman, for a customer who later changed his mind and refused to take the cab. *Held*, that the plaintiff may recover. *Isaacs* v. *Allen*, 48 L. J. 501.

The facts show that an action on the contract by the third party against the agent of a partly undisclosed principal is anomalous and not based on any real agreement between the parties. It is, however, well established law. *Argersinger* v. *Macnaughton*, 21 N. E. 1022, 114 N. Y. 535; *Horan* v. *Hughes*, 129 Fed. 248, 1005. It can be said in favor of this action that it works practical justice by offering the third party some other security than the credit of an unknown principal. The present defendant might well have been relieved, however, on the ground that he acted as an automaton, or messenger, rather than as an agent; and that no reliance was placed on his responsibility for the performance of the contract.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — LIFE INSURANCE POLICIES. — A bankrupt had a life insurance policy payable to his executors, administrators, or assigns, which, however, had been pledged to the amount of its cash surrender value. Section 75 a (5) of the Bankruptcy Act provides that by paying his trustee the cash surrender value of his policy he may retain it. *Held*, that the policy does not pass to the trustee. *Burlingham* v. *Crouse*, 33 Sup. Ct. 564.

The court proceeds upon the theory that as the bankrupt is to keep his interest over and above the cash surrender value, there is no occasion here for paying anything, because he has not any interest up to that amount. A decision to the same effect when the principal case was in the lower court was approved in 24 HARV. L. REV. 317.

CARRIERS — DISCRIMINATION AND OVERCHARGE — RIGHT TO COLLECT BALANCE OF LEGAL RATE FROM CONSIGNEE WHEN LOWER RATE WAS ORIGINALLY CHARGED. — The plaintiff collected from the defendant by mistake an amount lower than the rate published in accordance with the Interstate Commerce Act. The consignee was the commission agent of the consignor and had already accounted to his principal, — this relationship being unknown to the plaintiff when the goods were delivered. The plaintiff now sues the consignee for the balance of the legal rate. *Held*, that the plaintiff cannot recover. *Pennsylvania R. C.* v. *Titus*, 142 N. Y. Supp. 43 (App. Div.).

In Massachusetts a case arose having exactly the same facts as those in the New York case above. *Held*, that the plaintiff can recover. *New York, N. H. & H. R. Co.* v. *York & Whitney Co.*, 102 N. E. 366 (Mass.).

When a carrier by mistake, or even intentionally, quotes a lower rate than that published in accordance with the provisions of section 6 of the Interstate Commerce Act (*Act Feb. 4, 1887, C. 104*, 24 Stat. 380; *Amend. Act, June 29, 1906, C. 3591*, 34 Stat. 586), the carrier can demand the lawful rate before surrendering the goods. *Gulf, etc. Ry.* v. *Hefley*, 158 U. S. 98; *Southern Ry.* v. *Harrison*, 119 Ala. 539, 24 So. 552. It can sue for the unpaid balance after the goods have been delivered. *Union Pacific R. Co.* v. *American Smelting & Refining Co.*, 202 Fed. 720. And the carrier is not liable to the shipper for negligence in quoting the lower rate. *Texas & Pacific Ry. Co.* v. *Mugg*, 202 U. S. 242; *Illinois Central R. Co.* v. *Henderson Elevator Co.*, 226 U. S. 441. Upon a true analysis the rights and liabilities of employer and carrier arise by way of relation and not by way of contract. See 1 WYMAN, PUBLIC SERVICE CORPORATIONS, § 331 *et seq.* Therefore whoever enters into a relation with a carrier must pay the legal freight rate, since this payment is one of the duties incident to the relation. Any contract for a lower rate does not alter this duty,

as the statute is construed. The relation of carrier and employer between the company and the consignor is not exclusive of the same relation between the company and the consignee. The consignor may be bound by the tender of the goods for carriage. *Great Western Ry. Co.* v. *Bagge*, L. R. 15 Q. B. D. 625. The consignee may be bound by the acceptance of the goods. *Union Pacific R. Co.* v. *American Smelting & Refining Co., supra*; *Davison* v. *City Bank*, 57 N. Y. 81. See 2 HUTCHINSON, CARRIERS (3 ed.), § 807 *et seq.* The fact that the consignee is the agent of the consignor does not prevent the relationship from arising unless the carrier knew this fact, since the identity of the employer depends upon the reasonable impression of the carrier. *Sheets* v. *Wilgus*, 56 Barb. 662. The court in the New York case admits the liability of the consignor for the full legal rate, but denies the liability of the consignee for any amount in excess of the freight bill. The consignee entered the relationship just as did the consignor, and if he is bound at all, why is he not bound to the same extent as the consignor? *Union Pacific R. Co.* v. *American Smelting & Refining Co., supra.* It is difficult to see any reason why the consignee and not the consignor can employ as a defense either a contract to carry at an illegal rate or an estoppel which would force the plaintiff to do that which he is forbidden by statute. This would seem more clearly true, since in both cases the bill of lading said, "Owner or consignee shall pay freight." The result of the Massachusetts case seems necessary to preserve the integrity of the act.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — INSULTS BY A SERVANT. — In response to the plaintiff's demand for a seat on the defendant's train, the conductor in a sarcastic manner said in the hearing of other passengers that he would ask a lady friend of his to give up hers. *Held*, that the plaintiff may recover for mental humiliation and also have punitive damages. *Cave* v. *Seaboard Air Line Ry.*, 77 S. E. 1017 (S. C.).

For a discussion of the principles involved see 15 HARV. L. REV. 670. The decided cases relate to insults of a somewhat coarser kind. The allowance of punitive damages in the principal case is an eloquent tribute to South Carolina chivalry.

CONFLICT OF LAWS — REMEDIES: PROCEDURE — STATUTORY TORT — ACTION BARRED BY LIMITATION CLAUSE IN STATUTE. — A statute in Illinois gave a right of action for death by wrongful act, but provided that such action must be brought within a year. The plaintiff brought suit in Iowa upon the Illinois statute, but amended his declaration in an essential particular after the year had passed. By Illinois decisions the amendment as well as the original declaration had to be filed within a year, or else the action was held not to have been brought within the year. *Held*, that the action was commenced within the year. *Knight* v. *Moline, E. M. & W. Ry. Co.*, 140 N. W. 839 (Ia.).

In general, statutes of limitation affect the remedy only, not the right. Therefore an action barred by the *lex loci* may be maintained in a foreign state if not barred by the law of that state. *Le Roy* v. *Crowninshield*, 2 Mason 151, Fed. Cases 8, 269; *Finch* v. *Finch*, 45 L. J. Ch. N. S. 816. But where the statute creating the right of action also prescribes a time within which suit must be brought, the limitation is a condition of the cause of action and the expiration of the period extinguishes the right. *Davis* v. *Mills*, 194 U. S. 451, 24 Sup. Ct. Rep. 692; *Boyd* v. *Clark*, 8 Fed. 849. Thus the limitation in this class of cases, being one of substantive law, is governed by the *lex loci delicti. Boston and Maine R. R.* v. *Hurd*, 108 Fed. 116, 47 C. C. A. 615; *The Harrisburg*, 119 U. S. 199, 7 Sup. Ct. Rep. 140. Questions of procedure, however, are necessarily decided by the *lex fori. Bank of United States* v. *Donnally*, 8 Pet. 361; *Heaton*